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CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY

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10 Federal Trade Commission

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,  
14 Plaintiff,  
15 v.

16 COMMERCE PLANET, INC., a  
17 corporation, and MICHAEL Hill,  
18 CHARLES GUGLIUZZA, and AARON  
GRAVITZ, individually and as  
19 Officers of COMMERCE PLANET,  
20 Defendants.

) Case No.  
) SACV-09-01324 CJC (RNBx)

) ~~PROPOSED~~  
) FINAL JUDGMENT AND ORDER  
) FOR PERMANENT INJUNCTION  
) AND SETTLEMENT OF CLAIMS  
) FOR MONETARY RELIEF  
) AGAINST DEFENDANT  
) AARON GRAVITZ

21 The parties, Plaintiff the Federal Trade Commission  
22 ("Commission") and Defendant Aaron GravitZ, having agreed in the  
23 Stipulation for Final Judgment and Order for Permanent  
24 Injunction and Settlement of Claims for Monetary Relief Against  
25 Defendant Aaron GravitZ to the entry of this Order hereby  
26 request that the Court enter the same to resolve all matters in  
27 dispute in this action. Defendant Aaron GravitZ has waived  
28 service of the Summons and Complaint.

FINAL ORDER re AARON GRAVITZ

1 The Court, being advised of the premises, finds

2 **FINDINGS**

3 1. This Court has jurisdiction over the subject matter of  
4 this case and jurisdiction over Defendant Gravitz. Venue in the  
5 Central District of California is proper.

6 2. The Complaint states a claim upon which relief may be  
7 granted against Defendant Gravitz, and the Commission has the  
8 authority to seek the relief it has requested against Defendant  
9 Gravitz.

10 3. The activities of Defendant Gravitz were and are in or  
11 affecting commerce, as defined in Section 4 of the FTC Act, 15  
12 U.S.C. § 44.

13 4. Defendant Gravitz waives

14 a. all rights to seek review or otherwise challenge or  
15 contest the validity of this Order;

16 b. any claim Defendant Gravitz may have against the  
17 Commission, its employees, representatives, or agents;

18 c. all claims under the Equal Access to Justice Act, 28  
19 U.S.C. § 2412, as amended by Pub. L. 104-121, 110  
20 Stat. 847, 863-64, as of the date of this Order; and

21 d. any rights to attorneys' fees that may have arisen  
22 under said provision of law.

23 5. Defendant Gravitz stipulates and agrees to this Order,  
24 without trial or adjudication of any issue of fact or law, to  
25 settle and resolve all matters in dispute arising from the  
26 Complaint to the date of entry of this Order. Defendant Gravitz  
27 does not admit any of the allegations set forth in the  
28 Complaint, other than jurisdictional facts, and denies any and

1 all wrongdoing.

2 6. This action and the relief awarded herein are in  
3 addition to, and not in lieu of, other remedies as may be  
4 provided by law, including both civil and criminal remedies.

5 7. Entry of this Order is in the public interest.

6 **DEFINITIONS**

7 For purposes of this Order, the following definitions shall  
8 apply:

9 1. **"Billing information"** means any data that enables any  
10 person to access a consumer's account, including but  
11 not limited to a credit card, checking, savings, share  
12 or similar account, utility bill, mortgage loan  
13 account, or debit card.

14 2. **"Clear and conspicuous statement"** or statement  
15 presented **"clearly and conspicuously"** means

16 a. in print communications, the message shall be in a  
17 type size and location sufficiently noticeable for an  
18 ordinary consumer to read and comprehend it, in print  
19 that contrasts with the background against which it  
20 appears;

21 b. in oral communications, the message shall be delivered  
22 in a volume and cadence sufficient for an ordinary  
23 consumer to hear and comprehend it;

24 c. in communications made through an electronic medium  
25 (including but not limited to television, video,  
26 radio, and interactive media including but not limited  
27 to the Internet, online services and software), the  
28 message shall be presented simultaneously in both the

1 audio and visual portions of the communication. In  
2 any communication presented solely through visual or  
3 audio means, the message may be made through the same  
4 means in which the communication is presented. In any  
5 communication disseminated by means of an interactive  
6 electronic medium, including but not limited to the  
7 Internet, online services or software, a disclosure  
8 must be unavoidable and presented prior to the  
9 consumer incurring any financial obligation. Any  
10 audio message shall be delivered in a volume and  
11 cadence sufficient for an ordinary consumer to hear  
12 and comprehend it. Any visual message shall be of a  
13 size and shade, with a degree of contrast to the  
14 background against which it appears and shall appear  
15 on the screen for a duration and in a location  
16 sufficiently noticeable for an ordinary consumer to  
17 read and comprehend it; and

18 d. regardless of the medium used to disseminate it, the  
19 message shall be in understandable language and  
20 syntax. Nothing contrary to, inconsistent with, or in  
21 mitigation of the message shall be used in any  
22 communication.

23 3. **"Defendant,"** unless otherwise specified, means  
24 Defendant Aaron Gravitz.

25 4. **"Negative Option Feature"** means, in an offer or  
26 agreement to sell or provide any product, program or  
27 service, a provision under which the consumer's  
28 silence or failure to take an affirmative action to

1 reject products or services or to cancel the agreement  
2 is interpreted by the seller or provider as acceptance  
3 of the offer. Offers or agreements with negative  
4 option features include, but are not limited to

- 5 a. free or introductory price trial offers in which the  
6 consumer receives a product, program or service for  
7 free or at a nominal or introductory price for an  
8 initial period and will incur an obligation to pay or  
9 pay a greater amount for the product, program or  
10 service if he or she does not take affirmative action  
11 to cancel, reject, or return the product, program or  
12 service before the end of that period;
- 13 b. continuity plans in which, subsequent to the  
14 consumer's agreement to the plan, the seller or  
15 provider automatically ships products to a consumer  
16 unless the consumer notifies the seller or provider  
17 within a certain time not to ship the products; and
- 18 c. automatic renewal plans in which the seller or  
19 provider automatically renews the agreement and  
20 charges the consumer unless the consumer cancels  
21 before the renewal.
- 22  
23  
24  
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1                   **I. PROHIBITION ON MISREPRESENTATIONS**

2           **IT IS HEREBY ORDERED** that Defendant Gravitz, directly or  
3 through any partnership, corporation, subsidiary, division or  
4 other device, and his officers, agents, servants, employees, and  
5 all persons or entities in active concert or participation with  
6 him who receive actual notice of this Order by personal service  
7 or otherwise, in connection with the advertising, promoting,  
8 offering for sale, or sale of any product, program or service,  
9 are hereby permanently restrained and enjoined from  
10 misrepresenting, or assisting others in misrepresenting,  
11 expressly or by implication, any material fact, including but  
12 not limited to

13           A. That a product, program or service is offered on a  
14 "free," "trial," or "no obligation" basis, or words of  
15 similar import, denoting or implying the absence of  
16 any obligation on the part of the recipient of the  
17 offer to affirmatively act in order to avoid charges  
18 if, in fact, a charge will be assessed pursuant to the  
19 offer unless the consumer takes affirmative action to  
20 cancel;

21           B. The amount that a consumer will be charged or billed;

22           C. That a consumer will not be charged or billed;

23           D. The timing or manner of any charge or bill (including  
24 but not limited to the date of the charge and whether  
25 it will be a credit card charge or a checking account  
26 debit);

27           E. The length of any trial period that consumers receive  
28 before being charged or billed; and

1 F. That a consumer purchased or agreed to purchase a  
2 product, program or service, or that a transaction has  
3 been authorized by a consumer, including but not  
4 limited to through mailings, email, billings, credit  
5 card charges, and checking account debits.

6 **II. REQUIRED DISCLOSURES**

7 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or  
8 through any partnership, corporation, subsidiary, division or  
9 other device, and his officers, agents, servants, employees, and  
10 all persons or entities in active concert or participation with  
11 him who receive actual notice of this Order by personal service  
12 or otherwise, in connection with the advertising, promoting,  
13 offering for sale, or sale of any product, program or service,  
14 shall

15 A. Clearly and conspicuously disclose, before consumers  
16 are asked to pay money, submit consideration, or  
17 reveal billing information

- 18 1. all fees and costs;  
19 2. all material restrictions, limitations, or  
20 conditions applicable to the purchase, receipt,  
21 or use of the product, program or service that is  
22 the subject of the offer (including any promotion  
23 associated with free products or services, or  
24 products or services available on a trial basis);  
25 and

- 26 3. all material terms and conditions of any offer  
27 with a negative option feature, including but not  
28 limited to

- 1 a. the dollar amount of the first payment and  
2 when it will be charged, withdrawn, or  
3 become due; the dates or frequency (e.g.,  
4 monthly, quarterly) of all subsequent  
5 charges or payments; and the dollar amount  
6 or range of costs of all subsequent charges  
7 or payments;
- 8 b. when any trial period begins; the length of  
9 any trial period; the specific steps and  
10 means by which a cancellation request must  
11 be submitted; and the date by or period  
12 within which a cancellation request must be  
13 received to avoid a charge;
- 14 c. the length of any renewal period; the manner  
15 in which a notice not to ship or renew must  
16 be submitted; the date by or time period  
17 within which a notice not to ship or renew  
18 must be received to avoid shipment or  
19 renewal (e.g., two weeks after the consumer  
20 is advised of an upcoming shipment); and the  
21 telephone number, email address, or street  
22 address to which such a notice must be  
23 directed; and
- 24 d. all material conditions, limitations and  
25 restrictions on the ability of the consumer  
26 to use any product, program or service that  
27 is offered "free," "risk-free," with "no  
28 obligation," or "discounted," or words of



1 similar import denoting or implying the  
2 absence of any obligation.

3 B. For any transaction involving a service, within the  
4 lesser of ten (10) days after the date of the  
5 transaction or half the time of any trial period, send  
6 the consumer written confirmation of the transaction,  
7 either by email or first class mail, clearly and  
8 conspicuously identified as such in the email subject  
9 line or on the outside of the envelope; such written  
10 confirmation shall include clear and conspicuous  
11 disclosure of all the information required by  
12 Subsection A of this Section and of the procedures by  
13 which the consumer can cancel or obtain a refund;

14 C. For any transaction involving a product, provide  
15 written confirmation of the transaction with the first  
16 product shipment that includes all of the information  
17 required by Subsection A of this Section and a clear  
18 and conspicuous statement of the procedures by which  
19 the consumer can cancel or obtain a refund;

20 D. At least thirty (30) days prior to renewing a  
21 consumer's membership, subscription or agreement to  
22 purchase for any service (in the case of a membership,  
23 subscription or agreement whose term is six (6) months  
24 or longer) and prior to the submission for payment of  
25 a consumer's billing information for such services,  
26 send the consumer written confirmation of such  
27 renewal, either by email or first class mail, clearly  
28 and conspicuously identified as such in the email

1 subject line or on the outside of the envelope; such  
2 written confirmation shall include clear and  
3 conspicuous disclosure of all the information required  
4 by Subsection A of this Section and of the procedures  
5 by which the consumer can cancel or obtain a refund.

6 **III. EXPRESS INFORMED CONSENT**

7 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or  
8 through any partnership, corporation, subsidiary, division or  
9 other device, and his officers, agents, servants, employees, and  
10 all persons or entities in active concert or participation with  
11 him who receive actual notice of this Order by personal service  
12 or otherwise, in connection with the advertising, promoting,  
13 offering for sale, or sale of any product, program or service,  
14 are hereby enjoined from directly or indirectly using billing  
15 information to obtain payment in connection with the marketing  
16 of any product, program or service, without the express informed  
17 consent of the consumer, which shall include consent to be  
18 charged for the product, program or service using a specified  
19 billing account, and the clear and conspicuous disclosure of the  
20 information identified in the Section entitled "Required  
21 Disclosures" in close proximity to the consumer's express  
22 consent to purchase such products or services. In connection  
23 with an offer or agreement with a negative option feature, the  
24 following requirements must be met to evidence express informed  
25 consent:

- 26 A. The consumer's express written authorization to  
27 purchase the product, program or service that is the  
28 subject of the transaction and the consumer's

1 authorization to assess a charge against a specified  
2 account for payment. Such authorization must include  
3 the consumer's signature (the term "signature"  
4 includes a verifiable electronic or digital form of  
5 signature, to the extent such form of signature is  
6 recognized as a valid signature under applicable  
7 federal law or state contract law); or

8 B. The consumer's express oral authorization to purchase  
9 the product, program or service that is the subject of  
10 the transaction and the consumer's authorization to  
11 assess a charge against a specified account for  
12 payment for that product, program or service that is  
13 audio-recorded, as follows

- 14 1. the recording must evidence that the consumer,  
15 during that transaction, at a minimum, has  
16 provided the last four (4) digits of the account  
17 number to be charged;
- 18 2. the recording must evidence that the disclosure  
19 requirements of the Section entitled "Required  
20 Disclosures" have been complied with;
- 21 3. the recording must include the entirety of the  
22 transaction;
- 23 4. the recording can be identified and located by  
24 either the consumer's name or telephone number;  
25 and
- 26 5. a copy of the recording is provided upon request  
27 to the consumer, the consumer's bank, credit or  
28 debit card company or other billing entity, state

1 attorney general or consumer protection agency,  
2 and the Commission.

3 **IV. PROHIBITIONS RELATING TO REFUNDS AND CANCELLATIONS**

4 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or  
5 through any partnership, corporation, subsidiary, division or  
6 other device, and his officers, agents, servants, employees, and  
7 all persons or entities in active concert or participation with  
8 him who receive actual notice of this Order by personal service  
9 or otherwise, in connection with the advertising, promoting,  
10 offering for sale, or sale of any product, program or service,  
11 are hereby permanently restrained and enjoined

12 A. From failing to disclose, clearly and conspicuously,  
13 before consumers are asked to pay money, submit  
14 consideration, or reveal billing information, all  
15 material terms and conditions of any cancellation or  
16 refund policy, including but not limited to informing  
17 consumers that no cancellations or refunds are  
18 permitted;

19 B. If a policy allowing consumers to cancel or obtain a  
20 refund has been disclosed to the consumer, from  
21 failing to honor any request that complies with such  
22 policy; and

23 C. From misrepresenting, or assisting others in  
24 misrepresenting, expressly or by implication, the  
25 terms and conditions of any refund or cancellation  
26 policy or policies, including but not limited to, that  
27 consumers who accept an offer can easily cancel to  
28 avoid the assessment of a charge.

1 **V. MONETARY RELIEF**

2 **IT IS FURTHER ORDERED** that Judgment is hereby entered  
3 against Defendant Gravitz in the amount of nineteen million  
4 seven hundred thirty thousand dollars (\$19,730,000); *provided,*  
5 *however,* that the Judgment for equitable monetary relief shall  
6 be suspended upon the satisfaction of the obligations imposed by  
7 Subsection A, and subject to the conditions set forth in Section  
8 VI of this Order.

9 A. Defendant Gravitz shall pay to the Commission the sum  
10 of one hundred ninety-two thousand dollars (\$192,000)  
11 in equitable monetary relief, including, but not  
12 limited to, consumer redress or disgorgement, within  
13 10 business days of the entry of this Order;

14 B. Any funds received by the Commission pursuant to this  
15 Order shall be deposited into a fund administered by  
16 the Commission or its agent to be used for equitable  
17 relief, including but not limited to consumer redress  
18 and any attendant expenses for the administration of  
19 any redress funds. In the event that direct redress  
20 to consumers is wholly or partially impracticable or  
21 funds remain after redress is completed, the  
22 Commission may apply any remaining funds for such  
23 other equitable relief, including but not limited to  
24 consumer information remedies, as the Commission  
25 determines to be reasonably related to the practices  
26 alleged in the Complaint. Any funds not used for such  
27 equitable relief shall be deposited to the U.S.  
28 Treasury as equitable disgorgement. Defendant Gravitz

1 shall have no right to challenge the Commission's  
2 choice of remedies or the manner of distribution;

3 C. Defendant Gravitz agrees that the facts as alleged in  
4 the Complaint filed in this action shall be taken as  
5 true without further proof in any bankruptcy case or  
6 subsequent civil litigation pursued by the Commission  
7 to enforce its rights to any payment or money judgment  
8 pursuant to this Order, including but not limited to a  
9 nondischargeability complaint in any bankruptcy case;  
10 Defendant further stipulates and agrees that the facts  
11 alleged in the Complaint establish all elements  
12 necessary to sustain an action pursuant to Section  
13 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.  
14 § 523(a)(2)(A);

15 D. The judgment entered pursuant to this Section V is  
16 equitable monetary relief, solely remedial in nature,  
17 and not a fine, penalty, punitive assessment or  
18 forfeiture;

19 E. Defendant Gravitz relinquishes all dominion, control  
20 and title to the funds paid to the fullest extent  
21 permitted by law. Defendant shall make no claim to or  
22 demand return of the funds, directly or indirectly,  
23 through counsel or otherwise;

24 F. Upon request, Defendant Gravitz is hereby required, in  
25 accordance with 31 U.S.C. § 7701, to furnish to the  
26 Commission his tax identification number, which shall  
27 be used for purposes of collecting and reporting on  
28 any delinquent amount arising out of this Order;

1 G. Pursuant to Section 604(1) of the Fair Credit  
2 Reporting Act, 15 U.S.C. § 1681b(1), any consumer  
3 reporting agency may furnish a consumer report  
4 concerning Defendant Gravitz to the Commission, which  
5 shall be used for purposes of collecting and reporting  
6 on any delinquent amount arising out of this Order.

7 **VI. RIGHT TO REOPEN**

8 **IT IS FURTHER ORDERED** that the Commission's agreement to,  
9 and the Court's approval of, this Order are expressly premised  
10 on the truthfulness, accuracy and completeness of the financial  
11 statements dated February 6 and July 1, 2009, that Defendant  
12 Gravitz has submitted to the Commission. If, upon motion by the  
13 Commission, the Court finds that his financial statement  
14 contains any material misrepresentation or omission, the  
15 suspended judgment entered in Section V, above, shall become  
16 immediately due and payable, less any amounts turned over to the  
17 Commission pursuant to Section V, above, plus interest from the  
18 date of entry of this Order as allowed by law; *provided,*  
19 *however,* that in all other respects this Order shall remain in  
20 full force and effect unless otherwise ordered by the Court;  
21 and, *provided further,* that proceedings instituted under this  
22 provision would be in addition to, and not in lieu of, any other  
23 civil or criminal remedies as may be provided by law, including  
24 any other proceedings that the Commission may initiate to  
25 enforce this Order. For purposes of this Section VI, Defendant  
26 Gravitz waives any right to contest any of the allegations in  
27 the Complaint.

1           **VII. MONITORING TO ENSURE COMPLIANCE WITH THE ORDER**

2           **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or  
3 through any partnership, corporation, subsidiary, division or  
4 other device, and his officers, agents, servants, employees, and  
5 all persons or entities in active concert or participation with  
6 him who receive actual notice of this Order by personal service  
7 or otherwise, in connection with the advertising, promoting,  
8 offering for sale, or sale of any product, program or service,  
9 are hereby permanently restrained and enjoined from failing to  
10 take all reasonable steps sufficient to monitor and ensure that  
11 all Defendant's agents, representatives, employees, independent  
12 contractors, and contract telemarketers comply with the  
13 requirements of this Order. Such reasonable steps shall  
14 include, but are not limited to

- 15           A. Establishing and following a procedure for receiving  
16           and responding to consumer complaints that allege  
17           conduct that constitutes a violation of the FTC Act or  
18           this Order;
- 19           B. Ascertaining the number and nature of consumer  
20           complaints in which each employee or independent  
21           contractor is involved;
- 22           C. Promptly and fully investigating any consumer  
23           complaint; and
- 24           D. Creating and retaining records demonstrating  
25           compliance with this Section, as required by Section  
26           X, including but not limited to, copies of all  
27           procedures for receiving and responding to consumer  
28           complaints, all documents relating to investigations



1 of consumer complaints, and all documents  
2 demonstrating how each consumer complaint is responded  
3 to or addressed; *provided, however,* that this  
4 subsection does not authorize or require any action  
5 that violates any federal, state, or local law.

6  
7 **VIII. PROHIBITION ON COLLECTION OF PAYMENTS AND  
DISCLOSURE OF CUSTOMER INFORMATION**

8 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or  
9 through any partnership, corporation, subsidiary, division or  
10 other device, and his officers, agents, servants, employees, and  
11 all persons or entities in active concert or participation with  
12 him who receive actual notice of this Order by personal service  
13 or otherwise, in connection with the advertising, promoting,  
14 offering for sale, or sale of any product, program or service by  
15 means of a negative option feature, are hereby permanently  
16 restrained and enjoined from

- 17 A. Causing any withdrawal, assessment of a fee, or  
18 payment to be made against any consumer account, or  
19 otherwise causing collection of, or attempts to  
20 collect, payment, directly or indirectly, from a  
21 consumer, for any order for any such product, program  
22 or service offered or provided to consumers, where the  
23 purported authorization for such order occurred prior  
24 to the effective date of this Order, without first  
25 obtaining from the consumer express informed consent  
26 for such order that complies with the requirements of  
27 Section III of this Order; and  
28

1 B. Selling, renting, leasing, transferring or otherwise  
2 disclosing the name, address, birth date, telephone  
3 number, email address, Social Security number, credit  
4 or debit card number, bank account number, or other  
5 financial or identifying personal information of any  
6 person from whom or about whom such information was  
7 obtained in connection with activities alleged in the  
8 Complaint prior to April 1, 2008; *provided, however,*  
9 that such financial or identifying personal  
10 information may be disclosed to a law enforcement  
11 agency or as required by any law, regulation, or court  
12 order.

13 **IX. COMPLIANCE MONITORING**

14 **IT IS FURTHER ORDERED** that, for the purpose of (1)  
15 monitoring and investigating compliance with any provision of  
16 this Order and (2) investigating the accuracy of Defendant's  
17 financial statement upon which the Commission's agreement to  
18 this Order is expressly premised:

19 A. Within ten (10) days of receipt of written notice from  
20 a representative of the Commission, Defendant Gravitz  
21 shall submit additional written reports, which are  
22 true and accurate and sworn to under penalty of  
23 perjury; produce documents for inspection and copying;  
24 appear for deposition; and provide entry during normal  
25 business hours to any business location in his  
26 possession or direct or indirect control, to inspect  
27 the business operation;  
28

- 1 B. In addition, the Commission is authorized to use all  
2 other lawful means, including but not limited to:  
3 1. obtaining discovery from any person, without  
4 further leave of court, using the procedures  
5 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,  
6 45, and 69;  
7 2. posing as consumers and suppliers to Defendant  
8 Gravitz, or any other entity managed or  
9 controlled in whole or in part by Defendant  
10 Gravitz, or their employees, without the  
11 necessity of identification or prior notice; and

- 12 C. Defendant Gravitz shall permit representatives of the  
13 Commission to interview any employer, consultant,  
14 independent contractor, representative, agent, or  
15 employee who has agreed to such an interview, relating  
16 in any way to any conduct subject to this Order. The  
17 person interviewed may have counsel present;

18 *Provided, however,* that nothing in this Order shall limit the  
19 Commission's lawful use of compulsory process, pursuant to  
20 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to  
21 obtain any documentary material, tangible things, testimony, or  
22 information relevant to unfair or deceptive acts or practices in  
23 or affecting commerce (within the meaning of 15 U.S.C. §  
24 45(a)(1)).

1                                   **X. COMPLIANCE REPORTING BY DEFENDANT**

2           **IT IS FURTHER ORDERED** that, in order that compliance with  
3 the provisions of this Order may be monitored:

4           A. For a period of three (3) years from the date of entry  
5 of this Order, Defendant Gravitz shall notify the  
6 Commission of the following:

- 7           1. Any changes in his residence, mailing addresses,  
8           and telephone numbers, within ten (10) days of  
9           the date of such change;
- 10          2. Any changes in his employment status (including  
11          self-employment), and any change in his ownership  
12          in any business entity, within ten (10) days of  
13          the date of such change. Such notice shall  
14          include the name and address of each business  
15          that he is affiliated with, employed by, creates  
16          or forms, or performs services for; a detailed  
17          description of the nature of the business; and a  
18          detailed description of his duties and  
19          responsibilities in connection with the business  
20          or employment; and
- 21          3. Any changes in his name or use of any aliases or  
22          fictitious names; and
- 23          4. Any changes in structure of any business entity  
24          that Defendant Gravitz directly or indirectly  
25          controls, or has an ownership interest in, that  
26          may affect compliance obligations arising under  
27          this Order, including but not limited to  
28          incorporation or other organization; a

1 dissolution, assignment, sale, merger, or other  
2 action that would result in the emergence of a  
3 successor entity; the creation or dissolution of  
4 a subsidiary, parent, or affiliate that engages  
5 in any acts or practices subject to this Order;  
6 or a change in the business name or address, at  
7 least thirty (30) days prior to such change;  
8 *provided, however, that, with respect to any*  
9 *proposed change in the business entity about*  
10 *which a Defendant learns less than thirty (30)*  
11 *days prior to the date such action is to take*  
12 *place, such Defendant shall notify the Commission*  
13 *as soon as is practicable after obtaining such*  
14 *knowledge.*

- 15 B. One hundred eighty (180) days after the date of entry  
16 of this Order and annually thereafter for a period of  
17 three (3) years, Defendant Gravitz shall provide a  
18 written report to the Commission, which is true and  
19 accurate and sworn to under penalty of perjury,  
20 setting forth in detail the manner and form in which  
21 he has complied and is complying with this Order.  
22 This report shall include, but not be limited to  
23 1. His then-current residence address, mailing  
24 addresses, and telephone numbers;  
25 2. His then-current employment status (including  
26 self-employment), including the name, addresses,  
27 and telephone numbers of each business that he is  
28 affiliated with, employed by, or performs

1 services for; a detailed description of the  
2 nature of the business; and a detailed  
3 description of his duties and responsibilities in  
4 connection with the business or employment;

5 3. a copy of each acknowledgment of receipt of this  
6 Order obtained pursuant to Section XI; and

7 4. any other changes required to be reported under  
8 subparagraph A of this Section IX;

9 C. Defendant Gravitz shall notify the Commission of the  
10 filing of a bankruptcy petition within fifteen (15)  
11 days of filing;

12 D. For the purposes of this Order, Defendant Gravitz  
13 shall, unless otherwise directed by the Commission's  
14 authorized representatives, send by overnight courier  
15 all reports and notifications required by this Order  
16 to the Commission to the following address:

17 Associate Director for Enforcement  
18 Federal Trade Commission  
19 600 Pennsylvania Avenue, N.W., Room NJ-2122  
Washington, D.C. 20580  
RE: FTC v. Commerce Planet, Inc.;

20 *Provided that, in lieu of overnight courier,*  
21 Defendants may send such reports or notifications by  
22 first-class mail, but only if he contemporaneously  
23 sends an electronic version of such report or  
24 notification to the Commission at DEBrief@ftc.gov; and

25 E. For purposes of the compliance reporting and  
26 monitoring required by this Order, the Commission is  
27 authorized to communicate with Defendant Gravitz or,  
28 at Defendant Gravitz's request, his counsel.

1                                    **XI. RECORD KEEPING PROVISIONS**

2            **IT IS FURTHER ORDERED** that, for a period of six (6) years  
3 from the date of entry of this Order, in connection with any  
4 business which is managed or controlled in whole or in part by  
5 Defendant Gravitz and which is engaged in recurring billing of  
6 consumers, Defendant Gravitz and his agents, servants,  
7 employees, and those persons in active concert or participation  
8 with him, whether acting directly or through any sole  
9 proprietorship, partnership, limited liability company,  
10 corporation, subsidiary, branch, division, or other entity, who  
11 receive actual notice of this Order by personal service or  
12 otherwise, are hereby restrained and enjoined from failing to  
13 create and retain the following records:

- 14            A. Accounting records that reflect the cost of products  
15                                    or services sold, revenues generated, and the  
16                                    disbursement of such revenues;
- 17            B. Personnel records accurately reflecting the name,  
18                                    address, and telephone number of each person employed  
19                                    in any capacity by such business, including as an  
20                                    independent contractor; that person's job title or  
21                                    position; the date upon which the person commenced  
22                                    work; and the date and reason for the person's  
23                                    termination, if applicable;
- 24            C. Customer files containing the names, addresses, phone  
25                                    numbers, dollar amounts paid, quantity of items or  
26                                    services purchased, and description of items or  
27                                    services purchased, to the extent such information is  
28                                    obtained in the ordinary course of business;

- 1 D. Complaints and refund requests (whether received  
2 directly, indirectly or through any third party) and  
3 any responses to those complaints or requests;
- 4 E. Copies of all sales scripts, training materials,  
5 advertisements, or other marketing materials; and
- 6 F. All records and documents necessary to demonstrate  
7 full compliance with each provision of this Order,  
8 including but not limited to, copies of all procedures  
9 for receiving and responding to consumer complaints,  
10 all documents relating to investigations of consumer  
11 complaints, and all documents demonstrating how each  
12 consumer complaint was responded to or addressed,  
13 required by Section VII; acknowledgments of receipt of  
14 this Order, required by Sections XI and XII; and all  
15 reports submitted to the Commission pursuant to  
16 Section X.

17 **XII. DISTRIBUTION OF ORDER BY DEFENDANT**

18 **IT IS FURTHER ORDERED** that, for a period of five (5) years  
19 from the date of entry of this Order, Defendant Gravitz shall  
20 deliver copies of this Order as directed below:

- 21 A. For any business that Defendant Gravitz controls,  
22 directly or indirectly, or in which Defendant Gravitz  
23 has a majority ownership interest, Defendant Gravitz  
24 must deliver a copy of this Order to (1) all  
25 principals, officers, directors, and managers of that  
26 business; (2) all employees, agents, and  
27 representatives of that business who engage in conduct  
28 related to the subject matter of the Order; and (3)



1 any business entity resulting from any change in  
2 structure set forth in Subsection A.4 of the Section  
3 entitled "Compliance Reporting by Defendant." For  
4 current personnel, delivery shall be within five (5)  
5 days of service of this Order upon Defendant Gravitz.  
6 For new personnel, delivery shall occur prior to them  
7 assuming their responsibilities. For any business  
8 entity resulting from any change in structure set  
9 forth in Subsection A.4 of the Section entitled  
10 "Compliance Reporting by Defendant," delivery shall be  
11 at least ten (10) days prior to the change in  
12 structure.

13 B. For any business where Defendant Gravitz is not a  
14 controlling person of a business but otherwise engages  
15 in conduct related to the subject matter of this  
16 Order, Defendant Gravitz must deliver a copy of this  
17 Order to all principals and managers of such business  
18 before engaging in such conduct.

19 C. Defendant Gravitz must secure a signed and dated  
20 statement acknowledging receipt of the Order, within  
21 thirty (30) days of delivery, from all persons  
22 receiving a copy of the Order pursuant to this  
23 Section.

### 24 XIII. COOPERATION WITH FTC COUNSEL

25 **IT IS FURTHER ORDERED** that Defendant Gravitz shall, in  
26 connection with this action or any subsequent investigations  
27 related to or associated with the transactions or the  
28 occurrences that are the subject of the FTC's Complaint,

1 cooperate in good faith with the FTC and appear at such places  
2 and times as the FTC shall reasonably request, after written  
3 notice, for interviews, conferences, pretrial discovery, review  
4 of documents, and for such other matters as may be reasonably  
5 requested by the FTC. If requested in writing by the FTC,  
6 Defendant Gravitz shall appear and provide truthful testimony in  
7 any trial, deposition, or other proceeding related to or  
8 associated with the transactions or the occurrences that are the  
9 subject of the Complaint, without the service of a subpoena.

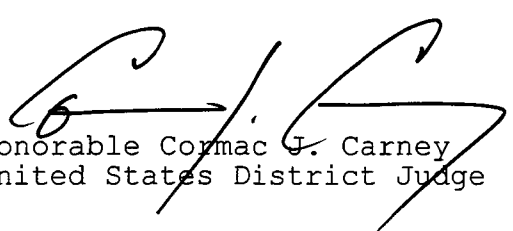
10 **XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

11 **IT IS FURTHER ORDERED** that Defendant Gravitz, within five  
12 (5) business days of receipt of this Order as entered by the  
13 Court, must submit to the Commission a truthful sworn statement  
14 acknowledging receipt of this Order.

15 **XV. RETENTION OF JURISDICTION**

16 **IT IS FURTHER ORDERED** that this Court shall retain  
17 jurisdiction of this matter for purposes of construction,  
18 modification, and enforcement of this Order.

19  
20 **IT IS SO ORDERED**, this 17<sup>th</sup> day of  
21 *November*, 2009.

22  
23   
24 Honorable Cormac J. Carney  
25 United States District Judge  
26  
27  
28